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INDIAN TRUST FUND MANAGEMENT

HEARING

BEFORE THE JAN 22 1993

SELECT COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

ONE HUNDRED SECOND CONGRESS

SECOND SESSION

ON

OVERSIGHT HEARING ON THE MANAGEMENT OF INDIAN TRUST FUNDS
BY THE U.S. GOVERNMENT

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INDIAN TRUST FUND MANAGEMENT

WEDNESDAY, AUGUST 12, 1992

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to other business, at 9:35 a.m., in room 485, Russell Senate Office Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senators Inouye, Wellstone, and Daschle.

STATEMENT OF HON. DANIEL K. INOUE, U.S. SENATOR FROM HAWAII, CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. This morning the committee meets in its oversight capacity to receive testimony on the management of Indian trust funds by the U.S. Government.

The matters we address this morning have been the subject of extensive study and evaluation over the years. It is an area fraught with controversy, and one which will require our sustained attention and efforts if the problems identified by the most recent reports and studies are to be effectively resolved.

Toward that end, Vice Chairman McCain and I have written to the Secretary of the Interior, the Director of the Office of Management and Budget, and to the Assistant Secretary of Indian Affairs, making clear the intent of this committee to work with the administration in assuring a cautious, deliberate, and methodical approach to the resolution of longstanding problems.

The funds that are held in trust by the U.S. Government for the benefit of Indian tribal governments and individual Indians derived from a number of sources. These funds include those revenues derived from the management of forestry resources on Indian lands; lands that lease for grazing purposes; lands leased for mineral, oil, and gas exploration; from other rents and leases; as well as from the ownership of lands by tribal governments or Indian allottees.

The management of these Indian trust funds, pursuant to the Chief Financial Officers Act of 1990, is the responsibility of the chief financial officer of the Department of the Interior. However, I am pleased to report that the Office of Management and Budget and the Executive Office of the President has undertaken an important role in assisting the Interior Department and the affected beneficiaries in addressing trust fund management issues and the development of a long-range strategic plan to resolve outstanding problems.

This morning our hearing is organized in a manner that is designed to help the committee understand the nature and scope of

Finally, at the Subcommittee's May 20, 1991 oversight hearing, Chairman Synar asked the Bureau about progress on a BIA strategic plan as well as the Bureau's efforts to implement the Committee on Government Operations' July 1985 report addressing the persistent problems in implementing a comprehensive program to assure fair and timely payment of Indian oil and gas royalty payments - management and accounting problems related to those confronting the Indian trust funds. The Bureau reported at that time - six years later - that no such plan exists. In fact, the Bureau admitted that no interest from royalty income has been distributed to an account holder since 1985. Indeed, most of the problems noted by the Committee's 1985 report persist unabated.

The Subcommittee's review of the Bureau's various management improvement initiatives revealed that comprehensive corrective actions were rarely undertaken and almost never carried through to a successful conclusion. Instead, the Bureau has routinely compiled running inventories of projects and initiatives without even attempting to knit these efforts together into a cohesive framework. Although the Bureau is chronically behind schedule - even on self-imposed deadlines - it rarely bothers to justify or even explain its delays in implementing corrective actions. Indeed, the only thing that seems to stimulate a flurry of activity at the Bureau is an impending appearance by the Assistant Secretary of Indian Affairs before a Congressional Committee. Afterward, all reform activities appear to suspend until shortly before the next oversight session.

As a result of this dismal history of inaction and incompetence, there is no assurance that the Bureau actually desires to, or will, make any substantial advancement toward rectifying the basic financial management failures brought to their attention. Despite a decade of initiatives, the Bureau's headquarters leadership and accountability continue to be woefully inadequate. Although many significant problems continue to be cited by the Inspector General, GAO, OMB, by independent accounting firms and the Subcommittee on Environment, Energy and Natural Resources, the Bureau's top officials remain quick to promise, but slow to perform. Only marginal and grudging progress has been made by the Bureau since the Subcommittee began its oversight efforts in 1989. As a result, on the whole, the Subcommittee is unable to report a positive picture of the Bureau's headquarters' concern over the management of this program.

This absence of interest and attention by the Bureau's top officials also undermines the ability of many dedicated, hardworking Bureau employees - especially at area and agency offices - to effect improvements in service to Indian Trust Fund account holders. It is apparent that top officials at the Bureau of Indian Affairs have utterly failed to grasp the human impact of its financial management of the Indian Trust Fund. The Indian Trust Fund is more than balance sheets and accounting procedures. These monies are crucial to the daily operations of Native American tribes and a source of income to tens of thousands of Native Americans.

To the extent the Bureau has made any progress in this area, it appears that the Subcommittee's continuing oversight hearings have been virtually the only reason. It can only be hoped that the Committee on Government Operations' report and recommendations and this Committee's interest will have a still greater effect on the Bureau of Indian Affairs' management of the Indian Trust Funds.

STATEMENT OF DR. EDDIE F. BROWN, ASSISTANT SECRETARY - INDIAN AFFAIRS, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, AT AN OVERSIGHT HEARING BEFORE THE UNITED STATES SENATE SELECT COMMITTEE ON INDIAN AFFAIRS ON THE "INDIAN TRUST FUNDS MANAGEMENT PROGRAM".

August 12, 1992

Good morning Mr. Chairman, and Members of the Committee. I am pleased to be here to discuss our efforts to improve the management of Indian trust funds. I have with me today, Mr. Dave Matheson, Deputy Commissioner of Indian Affairs, Mr. Jim Parris, Director, Office of Trust Funds Management, and key staff from Headquarters and the Trust Funds Office.

Indian trust funds total \$2 billion dollars and 291,000 individual accounts. The Committee is aware of the attention brought to the Bureau of Indian Affairs' (BIA) management of the Trust Fund over the past few years. As reported by a variety of oversight groups, we found serious deficiencies in how funds were accounted for and invested in the past. There are continuing deficiencies in management, staffing, and automated systems. Decades of inattention and neglect contributed to the growth of these problems.

When I took this office in 1989, I said that reform of the trust fund would be a critical priority with me. It has been and still is. I would like to be moving faster to improve trust funds management permanently, but correction will take time. I am confident that with the continued support of the Indian community and the Congress, our joint efforts to effect comprehensive and lasting improvement to BIA's management of Indian trust funds can be fully realized within the next five years.

I view the trust fund management issue as having three aspects. First, we must Resolve the Past. Second, we must Stabilize Current Operations. Third, we must Improve the Future. In the category of Resolving the Past, I will address consultation and

the reconciliation project. To Stabilize Current Operations we have a number of shorter term improvement efforts which we believe will strengthen the financial integrity of trust fund operations. Under the heading, Improving the Future, BIA has drafted a Strategic Plan for Indian Trust Funds Management which details our improvement plans for long term, comprehensive improvements to Indian Trust Funds Management. The Plan is under review within the Administration and should be finalized over the next few weeks.

RESOLVING THE PAST

Consultation

One of the early criticisms of the BIA has been that actions were taken without consulting with Indian tribes and others whose accounts were affected by what we do. As you are aware, the BIA had launched two unsuccessful efforts in the 1980's to contract out its trust funds operation.

In attempting to reform the process, I wanted to make sure that we consulted not only with the representatives of the account holder, but also with members of the Congress, the Office of Management and Budget (OMB), the General Accounting Office, (GAO) and the Joint Tribal/BIA/DOI Task Force on Reorganization of the BIA.

We began working with the group that represented Indian trust account owners that later evolved into the InterTribal Monitoring Association (Association) on Indian Trust Funds about two years ago, and have continued a very close working relationship with them. On June 18, 1991, a Memorandum of Understanding (MOU) was signed between the Association on Indian Trust Funds and my office delineating the Association's role in the improvement program, including preparation of a concept paper by the Association on the future direction of Indian trust funds. We

also arranged grant funds to defray certain allowable Association expenses in FY 1991 and FY 1992.

Consultation with the Association included obtaining and considering Association views on BIA management and policy decisions and the reconciliation efforts. We took into consideration the concept paper prepared by the Association in developing BIA's Strategic Plan for Indian Trust Funds Management. In addition, we have consulted with the Reorganization Task Force regularly on improvement efforts in the trust funds area.

I believe the long, deliberate consultation to discuss trust fund management with Indian tribes, Congress, OMB, and GAO has paid off in terms of the level of mutual understanding and the fresh ideas brought to the process. I am also pleased and encouraged that the Joint Tribal/BIA/DOI Task Force on BIA Reorganization agrees with the thrust of agency efforts to date, as expressed in their resolution of March 19, 1992.

Reconciliation -- Phase 1.

A well publicized element of BIA's Trust Funds Management Improvement Program is the effort to reconstruct the tribal and IIM accounts to the earliest date practicable. This is being accomplished through a major reconciliation, audit, and certification program that is expected to take several years.

Reconciliation -- Phase 1 was initiated in May 1991, when BIA signed a contract with Arthur Andersen & Company (Contractor) to accomplish reconciliations of trust fund accounts belonging to tribes and individual Indians. Phase 1 was designed as a "scoping" effort to determine the feasibility, cost, and best approach for account reconciliations. We learned much about the task of reconciliation - its enormity; its costliness; and that it's going to take time to get the job done.

In Phase 1, BIA and the Contractor initiated work on the 37 accounts of tribes who own 87 percent of the funds in the tribal trust fund, and also began work at three BIA agencies that administer 17,000 of the 289,000 IIM accounts. Records were inventoried and accumulated, reconciliation procedures developed and tested, automation hardware acquired and reconciliation software designed and tested. By mid-September 1991, the Contractor and BIA representatives completed field visits and nine entrance conferences for account holders at Agency offices involved in Phase 1. Orientation and training regarding the Reconciliation Project was completed for the Contractor staff, representatives of the Association, tribal coordinators, and the BIA staff. The research and development effort was to continue through May 1992, when, based on Phase 1 results, the contract Phase II decision would be made on how to proceed with reconciling the balance of the trust fund accounts.

However, in October 1991, early in Phase 1, the contractor reported that the reconciliation project as conceived, particularly the IIM portion, would be extremely expensive due to the large volume of source documents, to the poor organization and bad condition of BIA files, and to the need to manually handle and automate tens of thousands of boxes of financial records. In January 1992, the Contractor provided an assessment indicating that reconciliation of tribal accounts would cost an estimated \$5 to 15 million, and that an IIM account reconciliation estimate ranged from \$108 to 281 million, depending on approach, scope, and other factors.

Additionally, valid concerns were raised and the point made that proper accountability for trust funds goes beyond accounting, investing and disbursing of trust income and awards. The integrity of the income stream and its proper distribution is dependent on the various systems and personnel managing the trust assets. This includes complexities created by the rapidly

expanding fractionation of ownership interests, potential deficiencies in BIA support systems for ownership records and distribution such as the Integrated Records Management System, BLM issues related to lease inspection, and questions about the MMS's Indian oil and gas royalty collection systems. We acknowledge and are committed to the idea that a comprehensive solution to trust funds management must include plans to address these elements.

Consultation and work has continued among the BIA, OMB, the Contractor, and tribal representatives to scope the size, complexity, and approach for reconciliation and reconstruction of Indian trust fund accounts.

Reconciliation -- Phase II: Current Reconciliation Approach

In completing the reconciliation of tribal and IIM accounts, we intend to proceed with reconciliation of tribal accounts and the various systems supporting accounting and investment activities. Concurrently, we also plan to pursue a number of "scoping" exercises to examine means to verify the reconciliation effort. For instance, we will consider in-depth reviews of five tribes, to include testing source documentation back to ownership and distribution records, apart from the year to year reconciliation. A satisfactory approach for IIM accounts has not yet surfaced and further information is needed.

Tribal Judgment and Income Accounts. The reconciliation of tribal accounts will be undertaken in two concurrent efforts: (1) the first effort will be the reconstruction of tribal settlement funds, which account for 70 percent of the \$1.5 billion, or about \$1.1 billion in tribal funds; and (2) the second effort will involve the reconstruction of tribal income funds, which constitute the remaining 30 percent or \$0.4 billion. This two-prong approach for tribal account reconciliation is being utilized because it will allow the effort to be separated

into more manageable segments and likely allow for the majority of tribal funds (specifically judgment/settlement funds) to be reconciled quicker than income funds. Reconciliation will be performed for judgment/settlement funds on an annual basis back to the earliest practicable date (i.e., the earliest date for which records are available) as far back as 1973.

The project will be conducted by teams from the Contractor working with the existing teams of BIA staff. As BIA acquires personnel, and work and schedule permits, the BIA may phase down the Contractor involvement to reduce costs. Both the reconciliation of tribal judgment/settlement funds and income funds will begin working backwards on an annual basis, initially concentrating on periods from 1983 back through to 1973 in the BIA Manual records. The project includes all tribal Special Deposit accounts. Reconciliation of BIA records to external systems (particularly of the Finance System to the Treasury) will be performed under the Contract.

IIM Reconciliations. We will form a small Study Team composed of seven to nine experts from BIA, the Contractor, other Interior bureaus and other sources to perform an operational review of IIM trust funds management. The team will recommend an approach for reconciliation and/or resolution of the IIM reconciliation effort. For example, the procedures for reconciling IIM account differences and balancing account totals would need to be structured. The team will seek information at and down to the Agency Office level. The team will be chartered to examine the full range of IIM reconciliation issues, including records availability, ownership and distribution information, Agency accounting status and practices, underlying records, systems, and processes, etc. We expect the team's report and recommendations by February 1993.

System Reconciliations. Work will continue to reconcile trust fund accounting records with counterpart Department of the

Treasury records. Work has been initiated and will continue to reconcile various internal subsidiary accounting records with the accompanying general ledger accounts, and with the several trust funds accounting and investment subsystems currently in use. BIA has required regional (Area and Agency Offices) to perform daily and monthly reconciliations of accounts. These continuing reconciliations are being accomplished, reinforced by strong performance elements in managerial performance standards.

A joint BIA/Contractor team will be formed to focus on and perform system reconciliation work among the Finance System, the IIM subsidiary system and Treasury records in a centralized setting in Albuquerque. We have set the following goals for this effort:

- BIA will reconcile and clear all variances between BIA's investment systems and the Finance System by December 1992;
- BIA will reconcile the Finance System general ledger balances to the U.S. Treasury tribal trust fund and IIM account balances by December 1993;
- BIA will reconcile and clear all variances between the IRMS IIM subsidiary accounting system and the Finance System by December 1994.

Strong internal controls will be installed to ensure continuing reconciliation once systems are reconciled.

STABILIZING CURRENT OPERATIONS

Early on we recognized that a comprehensive fix to trust fund problems was a long term effort. We also recognized that something needed to be done in the short term to "stop the hemorrhaging" while long term improvements were underway.

Following are examples of important improvements implemented or underway to correct immediate critical operational problems.

Management and Organization. Trust Funds Management was established as a top priority for the Office of the Assistant Secretary - Indian Affairs, the top level DOI/OMB oversight structure, and the BIA Management Improvement Oversight Committee.

Most trust fund management activities were centralized in a separate directorate, the Office of Trust Funds Management. A dedicated Reconciliation Project staff within the Office of Trust Funds Management was established to administer that project. A total of 18 new staff have been hired, bringing staffing within the Office of Trust Funds Management to 44 of 51 authorized personnel. Recruitment continues to fill authorized staff positions. We also recently proposed to Congress a realignment of the Office of Trust Funds Management which will strengthen the quality assurance and automated systems functions within the Office. Our FY 1993 budget request identifies a need for 40 additional Full-Time Equivalent (FTE) positions for the Office.

BIA trained BIA Area accounting staffs on monthly reconciliations of current IIM accounting transactions, and the Office of Trust Funds Management developed and held a training course in late 1992 for approximately 40 Area/Agency field staff. Course coverage included tribal trust funds, IIM accounts, investments, and trust funds management systems.

We will also be developing and distributing desk operating procedures, conducting operational reviews, and providing additional training to the trust funds staff, both in Albuquerque and other field sites.

BIA's "Reconciliation Project Management Plan" was published in September 1991. BIA's FY 1992 "Short Term Projects" was

published in November 1991 and widely distributed in January 1992. The approach for development of BIA's Strategic Plan was adapted from a model presented by representatives of the GAO, and is reflected in BIA's "Strategic Planning Framework". The "Strategic Plan for Indian Trust Funds Management" has been drafted and is being reviewed within the Administration.

Quarterly status reports have been provided congressional oversight and appropriations committees, and congressional staff have been briefed periodically concerning the reconciliation and trust funds management improvement project.

Accounting/Investment. BIA's "Policies Regarding Notification and Reimbursement to Indian Trust Fund Account Holders for Losses Attributable to Bureau Errors" was published in October 1991.

BIA improved deposit reporting, implementing new telefax procedures to allow more timely accounting/investment of deposits of checks and cash by Area/Agency Offices.

BIA has initiated the Trust Disbursement Project in Anadarko Area to respond to allottee and litigation complaints that the Department was not complying with requirements of the Federal Oil and Gas Royalty Management Act of 1982. Specifically, oil and gas disbursements to allottee recipients will be accompanied by an Explanation of Payments covering check disbursement.

Systems. Data entry efficiencies were introduced for investment systems through an automated interface that provides single entry into the various investment-related data bases -- INFO, Finance System, MoneyMax, EASYTRIEVE, and Certificate if Deposit-related bid/sort information.

BIA completed Phase 1 of the Standard Form (SF) 1081 Reconciliation Project which automates comparison between BIA's Royalty Distribution Reporting System and the MMS's royalty

payment information being submitted on manual and automated SF 1081's, and enhances interest distribution. Phase II, incorporating improved management reports is scheduled for implementation in December 1992.

IMPROVING THE FUTURE

In addition to standardizing operations, however, we must bring lasting, comprehensive improvements to all phases of trust funds management. BIA's comprehensive plan for improvement of trust funds management is embodied in the draft "Strategic Plan for Indian Trust Funds Management".

An important point to make is that this Strategic Plan, or Phase I, addresses trust fund management in terms of trust financial accounting and investment, acknowledging the need to deal with the related non-trust fund systems within BIA, BLM, and MMS. This approach was worked out and agreed to with Indian representatives, including the Association. BIA has agreed to address other aspects of "trust management" -- ownership records, distribution calculations, fractionated interest, BLM and MMS involvement -- in a second strategic plan, as a part of what we refer to as the "Phase II" effort. This effort commenced in mid-May, and we have been actively working with representatives of the Indian community on this effort.

With regard to the draft "Strategic Plan for Indian Trust Funds Management", let me touch on how we approached developing the Plan, its approach, and its contents. The Strategic Plan approach and model was adapted from examples provided by the GAO. We coordinated and published a document which set out the strategic planning process, BIA's "Strategic Planning Framework". This helped set the agenda for development of the Strategic Plan.

I would also add that both the Association and the Joint Tribal/BIA/DOI Task Force on Reorganization of the BIA have been

active participants in the process of developing the Framework and the Strategic Plan.

As the initial step in the strategic planning process, BIA examined the mission, organization, and staffing of the Office of Trust Funds Management. Following the mission, organization and staffing analysis, the strategic planning process we adopted centered management and our Indian client's focus on four fundamental strategic questions:

1. Direction: Where is Indian Trust Funds Management going?
2. Strategies: How will BIA get there?
3. Action Plans Budget: What is BIA's blueprint for action?
4. Accountability: How will achievement of the Direction be known?

We then used seven planning steps to facilitate answers to the four questions.

"Direction" was addressed by obtaining the commitment of key groups for the strategic planning process; by scanning the internal and external environments; and by articulating BIA's strategic direction for trust funds management in a series of goals. Next, "Strategies", or approaches to address each goal, were developed from a wide range of possible approaches or actions. This effort resulted in the following strategic agenda.

Strategic Goal 1: Collect, account for, invest, distribute and provide information on trust funds in an accurate and timely manner.

Strategic Goal 2. Resolve past accounting distribution problems as they affect tribes and individual account holders.